IRISH TERRORISTS ON THE RUN

Jonathan is due to see Gerry Adams on Wednesday to discuss, among other things, the dropping of proceedings against those whom Sinn Féin call “on the runs”. This whole issue is politically extremely sensitive.

Detail

At Hillsborough, and in a letter to Gerry Adams immediately afterwards, you undertook

- to arrange for Gareth Williams to consider, without commitment, a number of individual cases, with a view to giving a response within a month if possible;

- to consider Sinn Féin’s arguments for drawing a line under all outstanding pre-Good Friday Agreement cases after 28 July (when most remaining prisoners are due to be released), with the aim of deciding the way forward by 28 July.

2. In principle, you gave no commitment as to the outcome on either point, although an expectation was created of a positive result for Sinn Féin.

3. Although, at Hillsborough, there was talk of around a dozen cases, Adams sent Jonathan details of 36. Of these, 17 involved people who may be subject to prosecution for pre-Good Friday Agreement offences (including [REDACTED] and 19 people who were
serving sentences for such offences when they escaped from prison and are now the subject of extradition proceedings.

"Prosecution" cases

4. Gareth Williams arranged for the 17 "prosecution" cases to be reviewed by the DPPs in Northern Ireland and England and Wales. That review is almost complete. In three cases, the conclusion reached is that there is insufficient evidence to afford a realistic prospect of conviction. I understand that there may be one or two more in this category. This means that, at most, five of the 17 cases will have been dropped.

5. Gareth considers that - save where specific public interest considerations have been put before him, as in case - this case-by-case review on evidential grounds is the most appropriate approach. The 17 IRA cases may not be the whole story, and there may also be some loyalists on the run. If we believe that there is a public interest that demands the dropping of prosecutions across the board, Gareth thinks the right course would be a legislative amnesty. I agree, but I think legislation in effect to block the prosecution of all Irish terrorist offences committed prior to the Agreement by members of organisations on ceasefire would be a step too far at this stage. I believe that public opinion (unionists and GB) would accept this when republican bona fides are more firmly established in terms of their peaceful intentions and of decommissioning progress. In the meantime, I would hope that the application of public interest criteria will result in further prosecution cases being dropped.

"Extradition" cases

6. Where people have already been convicted but have escaped - as in the remaining 19 of the 36 on the Sinn Féin list - there are three distinct questions. What to do about the extradition proceedings. What to do about the sentences they were serving when they escaped. And whether to prosecute for any offences committed while escaping.
7. We ought, in any event, to be looking again at whether to continue our efforts to extradite such people. After 28 July, most of them would, if returned to Northern Ireland, be eligible for release under the early release scheme immediately or within a very short period, although in some cases there may be a question of prosecution arising from escapes.

8. Dropping outstanding extradition requests in cases of this kind would be criticised. It would be said that only the Sentence Review Commissioners can decide whether someone is eligible for early release; that it was presumptuous of us to assume a particular decision by the Commissioners; and that by abandoning the attempt at extradition we were rewarding the original escape rather than punishing it. I might well face applications for judicial review with inevitable disclosure of documents.

9. Even so, this seems to me to be the most defensible next step in Sinn Féin's direction, although I would want to look carefully at the circumstances of individual cases. Most people would accept that there is little point in carrying on spending public money trying to get back from Ireland or the USA people who would in all probability not have to serve any significant time in prison even if we succeeded. The most high profile case would be that of three IRA men and whom we have been trying to extradite for some years.

10. Simply dropping the extradition cases would not satisfy Adams. He would want to be sure that, if the people concerned returned to Northern Ireland, they would not be arrested.
11. There are two ways in which this could be done.

- I could recommend the exercise of the Royal Prerogative of Mercy, case by case, to remit what remains of their sentences. But it would be highly controversial to use the Prerogative for this sort of purpose, rather than seeking Parliament’s approval. The important point to bear in mind is that, unlike those released under the early release scheme, the beneficiaries would not be subject to any licence requirements. I would probably face judicial review and, as a matter of principle, it would be hard to defend.

- We could bring forward legislation to extend the early release scheme to those unlawfully at large, so that they could apply to the Sentence Review Commissioners from abroad without giving themselves up. (At the moment, you have to be serving a sentence in Northern Ireland even to apply to the Commissioners.)

In both cases, the effect would be that the applicant was free to return to Northern Ireland, provided he was not wanted for other offences, including any offences committed while escaping. This would be for the Attorney and the DPPs to address.

12. The legislative route is obviously the more satisfactory way of meeting the Sinn Féin point if we wish to do so. It has the added advantage that those whose sentences were reduced would be subject to the same licence conditions as those already released.

13. But, quite apart from the pressure on the legislative programme, I have serious doubts about the effect on the Government’s standing of taking through Parliament a Bill on these lines in the next session. It would revive all the emotions around the original Sentences legislation, but without the cover of the Good Friday Agreement, which contained nothing about fugitives. It would be easy for our opponents to identify individual cases involving horrendous terrorist offences. At the very least it would be
argued that it was premature to wipe the slate so clean while the IRA still held on to its arms.

14. In fairness to Sinn Féin, they will argue that it is hard for them to persuade their activists that the war is really over when those who escaped from prison many years ago and stood to benefit immediately from the early release scheme cannot return to Northern Ireland without fear of arrest. There is a lot in that argument, and we should not underestimate the head of steam that Adams is getting up on the subject with the White House and the Irish. The question is how much the market will bear on the other side, and how soon it will bear it.

15. In terms of handling, I think the most that should be said to Adams now is that

- we accept that the passage of the 28 July date will require a radical reappraisal of outstanding extradition requests, and are ready to consider dropping most if not all of them;

- we are still looking at how best to deal with the question of outstanding sentences;

- the question of prosecution for escape and offences committed during escape would remain for the DPP to decide on normal evidential and public interest grounds.

One non-legislative option which might be worth exploring with Adams would be a fast-track procedure for processing applications under the existing scheme; where the fugitive did return to Northern Ireland, with the fugitive released from custody under Prison Rules as soon as he had completed his application. I am looking at the feasibility of this, but I very much doubt if it would be acceptable to Sinn Féin since the fugitive would still have to give himself up.
16. I am copying this to Jack Straw and Gareth Williams, and to Sir Richard Wilson.

[Peter]

PETER MANDELSON